

## REMARKS

These amendments and remarks attend to all outstanding issues in the Office Action mailed December 7, 2006. Claims 5-9 and 11-16 are pending in the application. Claims 1-4 and 10 are cancelled.

Claim 8 has been amended to incorporate subject matter from dependent claim 10. The dependency of claim 11 has been amended to reflect this change. Claim 13 has been amended to specify that the wheat protein isolate added to the food product is unhydrated. Support for this amendment may be found, for instance, at Example 1, [0041] which states that “[t]he water was added slowly to the dry mix”. No new matter has been added to the claims by these amendments.

### Claim Rejections – 35 U.S.C. § 102(b)

Claims 1-2, 5-6, 8-9 and 12 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,403,610 granted to Murphy et al. (hereinafter “Murphy”).

To anticipate a claim, a reference must teach every element of the claim and “the identical invention must be shown in as complete detail as contained in the... claim.” *MPEP 2131* citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989). Murphy does not teach every element of Applicants’ claims.

Murphy discloses doughs and batters for producing reduced-fat and fat-free baked goods. The doughs and batters contain hydrated polysaccharide hydrocolloids and hydrated insoluble fiber, and optionally hydrated protein, such as wheat protein isolate or wheat gluten. The hydrated materials are prepared as aqueous dispersions by the combination of the dry material with water prior to incorporation of the hydrated material into the dough or batter. Each of the hydrated polysaccharide, hydrated fiber and hydrated protein is able to ‘function as a reservoir of bound moisture which is able to slowly release into the baked good as moisture is passed from the baked good to the ambient atmosphere’ (col. 2, lines 5-8).

Murphy does not disclose fried food products, as required by independent claims 5 and 8, or cake donuts, as required by dependent claims 7 and 11. The Examiner recognizes these failings in the Office Action dated December 7, 2006, p. 2, "Murphy et al do not disclose the food product is a fried food, the fried food is a cake donut and cooking by contacting with oil or fat." Thus, Murphy fails to disclose every element of Applicants' claims, and cannot support a case of anticipation.

Withdrawal of the 35 U.S.C. § 102(b) rejection and reconsideration of claims 5-6, 8-9 and 12 is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 103(a)**

Claims 3-4, 7, 10-11, 13-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Murphy.

The following is a quotation from the MPEP setting forth the three basic criteria that must be met to establish a *prima facie* case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 7 and 11 depend from independent claims 5 and 8, which require that the food product be fried. The Examiner states that although Murphy does not disclose a food product that is a fried food, it would have been obvious to fry a donut because donuts are conventionally cooked by frying. We disagree.

Murphy seeks to prepare a reduced-fat or fat-free baked product where "the dough or batter is free of overtly added fat materials, such as shortening." (col. 4, lines 51-52) It is well known that subjecting a food product to frying necessarily and overtly adds fat to that product. Thus, Murphy teaches away from such practices, and there is no motivation to fry the donut disclosed by Murphy.

Reconsideration and allowance of claims 7 and 11 is respectfully requested.

Amended claim 13 recites a method for preparing a food product having a reduced fat content which comprises:

adding an unhydrated wheat protein isolate in the range of about 0.5 wt % to about 10.0 wt % by flour weight to the food product; and  
cooking said food product by contacting the food product with oil or fat.

Although Murphy does state that hydrated materials “can be utilized in batter and dough formulations which do include added unhydrated...protein materials” (col. 4, lines 28-31), Murphy does not disclose an amount of unhydrated wheat protein isolate to be added to a food product. Nor does Murphy disclose that the food product is cooked through contact with oil or fat; particularly, where such contact involves frying (claim 15). As discussed above, Murphy teaches away from overt fat addition, and there is no motivation to fry the disclosed baked goods.

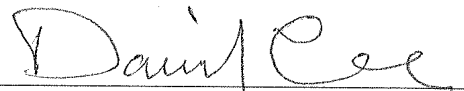
Reconsideration and allowance of claims 13-16 is respectfully requested.

In view of the above Remarks, Applicants have addressed all issues raised in the Office Action dated December 7, 2006, and respectfully solicit a Notice of Allowance. Should any issues remain, the Examiner is encouraged to telephone the undersigned attorney.

Authorization to charge fees associated with a Request for Continued Examination and a two-month extension of time is submitted herewith. If any additional fee is deemed necessary in connection with this Response, the Commissioner is authorized to charge Deposit Account No. 12-0600.

Respectfully submitted,

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